

Leveson - to regulate or not to regulate? The question dividing journalists and educators

The Leveson Inquiry is due to report on November 29 but already much of the national and regional press has been campaigning to hold on to self regulation.

The Sun and the Telegraph launched their campaigns to keep self-regulation in early November. A letter to the Guardian by 42 Tory MPs supporting statutory regulation sparked the Sunday Telegraph to dish the dirt on 14 of them claiming this was why they wanted limits on the press. This backfired somewhat when 30 more MPs publicly joined the 42 over claims of press bullying. A few days later the Daily Mail waded in, accusing many campaigners for stronger regulation including Hacked Off supporters and Sir David Bell of a “coup by the Left’s old boy network” linking them to the Bureau of Investigative Journalism currently in the doghouse over Lord McAline.

The big debate of course is not whether the press behaved badly, or is likely to continue behaving badly but is about how we manage a regulatory system to gain some sensible and generally agreed balance between press freedom and the individual rights of members of the public.

There are three key issues that consistently raise their head during discussions about regulation:

How does the regulator oblige newspapers to accept its rulings?

What criteria should be used to choose which publishers are covered?

Is the new body a regulator or a complaints handler – in other words, what powers should it have?

One overwhelming feature of the debate is its very limited nature outside of Leveson’s courtroom. Publishers are keen to get their version of the regulator, a version that has been pressed strongly in many newspapers, but there have been limited opportunities to hear other views. Here Journalism Education identifies two very different ways of handling the press. One from former AJE chair, Mick Temple looks at a press without regulation whilst Chris Frost, the present chair, puts the case for a strong regulator.

In defence of a free press

Mick Temple, Staffordshire University

Before I begin my defence of it, I know that there is really no such thing as a ‘free press’ (Journalism 101, lecture two). Apart from the journalists who produce them, owners, advertisers and (at times) governments have always exercised some control over the newspapers we read.

To be clear, what I want are newspapers free from direct or even indirect governmental control - and some such control seems likely to emerge from the Leveson Inquiry.

It’s been a long wait. So long that the authors of a number of ‘definitive accounts’ now fear there may be no press left to regulate by the time Leveson reports. One’s heart bleeds for John Mair and Richard Keeble, not to mention those of us signed up and eager to pour out our scorn/anger/delight/disappointment/puzzlement (delete as appropriate) on the noble lord’s conclusions.

The editors of Journalism Education had also planned to give our responses to Leveson in this edition but we can’t wait for ever. So Chris Frost’s and my short articles are alternative ‘responses’ to the most likely outcome.

First, one point has to be acknowledged.

The British public is not waiting with eager anticipation for the publication of Lord Leveson’s recommendations on press regulation. Unlike the publication of Lord Denning’s report into the Profumo affair, they will not be queuing outside W H Smith or HMSO to pick up copies. Except for a small group of politicians, academics, maligned celebrities and journalists, the interest is minimal. More people are interested in who wins the X Factor than what Lord Leveson has to say.

Of course, lack of interest by the public does not equate to a lack of public interest, which is not to say the public shouldn’t be interested in Leveson’s conclusions. The consequences of ill-considered reform could affect the quality of information we receive, although that may be only in the short term, because the end of the printed press is surely nigh.

But Hackademia’s obsession with Leveson shouldn’t be allowed to obscure the fact that the audience has long since moved on. The Sun on Sunday’s sales of more than two million in the wake of the closure of the News of the World suggests its readers have forgotten their outrage over Milly Dowler.

Anyway, the report is certain to recommend changes to the current voluntary system of press regulation – probably some form of regulatory code of conduct underpinned by statute. Of course, quite what this means has never been made clear. I hope Lord Leveson will provide greater clarity than the statutory regulation lobby.

That group includes my co-editor Chris Frost, the National Union of Journalists, the single-issue pressure group Hacked Off and the Coordinating Committee for Media Reform (and God help Josef K if he ever appears in front of the CCMR).

Opposition to statutory control has been dismissed by supporters of change as a concerted action by the press to preserve their ‘freedom’ to continue to act irresponsibly. In response, Paul Dacre and the Mail attack the ‘quasi-masonic nexus’ who seek to muzzle the press.

Not everyone in this debate has a vested interest. Apart from writing academically about them, I am wholly unconnected with national newspapers, yet I look at the responses from the NUJ and most media academics with sadness.

Professor Brian Cathcart of Hacked Off dismisses objectors, arguing we have a ‘once-in-a-generation opportunity’ to tackle the intrusion and dishonesty of the British press (The Guardian, 6

November 2012). But as another university professor, Tim Luckhurst, points out, virtually every objectionable action by the press ‘uncovered’ by Leveson was in fact a criminal offence already punishable by law (Daily Telegraph, 13 November, 2012). The scandal is not only the illegal and undeniably unethical practices of some owners, editors and journalists: it is the corruption in the police, revealed by their wilful failure to investigate such law-breaking properly.

What world are the proponents of statutory legislation living in? It’s certainly not the world of our journalism students, for whom newspapers – whether in print or online – seem a rather quaint way to get your news.

What is a newspaper in the multi-media world? It doesn’t matter, because the term ‘newspaper’ is rapidly becoming redundant. And any code of conduct will quickly take the same road into obsolescence as our traditional printed newspapers.

At a recent debate on Leveson at the Frontline Club, I listened dejectedly as a stream of journalists and journalism educators demanded a compulsory code of press conduct backed by statute. Most seemed unconcerned about their illiberality, convinced of their rightness in a way I found deeply disturbing from professions for whom freedom of speech should be paramount. That so many media academics have argued for statutory regulation has already aroused concern, a point noted by the Independent’s media correspondent, Ian Burrell (13 November 2012). The hackademics also seemed not to understand that the world has changed since their day.

Professor Stuart Purvis’s solution to the ‘Desmond problem’ – that is, what do the ‘regulators’ do if a newspaper refuses to sign up to a code of practice – showed the inflexibility of their position. We fine them, said Purvis – whose time at Ofcom may have informed his approval for regulation – and we keep on fining ‘them’ until ‘they’ decide it’s cheaper to pay to join up. This attack on liberty was received with approval by many of the audience.

So what would happen if a print publication refused to sign up to a statutory code of conduct? Unlike the USA, we don’t have a constitution prohibiting any law infringing the freedom of the press, but Article 10 of the European Convention on Human Rights, despite its acceptance of the state’s right to license ‘broadcasting, television or cinema enterprises’, would certainly be cited by lawyers. The resulting court cases could drag on until long after the death of the printed newspaper, which may be much closer than we think.

And who are ‘they’? Is Private Eye a newspaper? Will the huge number of citizen journalism websites also be subject to a statutory code? How about Hello, Bella and OK, whose content is often intrusive and difficult to justify?

Professor Cathcart suggests there should be a clause requiring all newspaper publishers with revenues over say, £50 million, to participate in this regulatory regime. He asks if that would amount to licensing of the press, without answering his own question. Well, yes Brian, it would. Come back Roger L’Estrange, all is forgiven.

We don’t need a compulsory code of conduct backed by statute. Britain already has one. It’s the law of the land – and blinkered, biased and beset with inconsistencies as it is, our law is more than capable of dealing with the illegality of newspapers – if it wants to.

Unlike most opponents of statutory regulation, I don’t want a tweak of the current system. I don’t want PCC Plus, Minus or Squared.

I want all newspapers, magazines, journals, pamphlets – whether in print, online or technologies yet to be invented – to be free to publish whatever they want. If it’s libellous let them be sued. If our libel laws inhibit the ‘ordinary man or women’ from suing, then reform the law, as is currently happening.

If newspapers are biased, inaccurate or ‘economical with the truth’, so what? We are all biased, inaccurate and economical with the truth when it pleases us.

Trust the audience to make its own judgements. The elite classes of Britain – and academics are especially guilty of this – often appear to regard the masses as ‘gullible dupes’ incapable of understanding the difference between ‘truth’ and ‘propaganda’. Opinion polls consistently show a

public opposed to statutory controls, but that is irrelevant to those who believe they know best – the people have to be protected from big bad organisations who will tell them lies.

There is a market for truth, fairness and balance in news – the respect in which the BBC is held worldwide demonstrates that, despite its recent problems. And we have newspapers which remain committed to accuracy in their reporting. The Guardian or The Independent do not need an imposed code of conduct and statutory control – their audiences expect the highest standards from their journalism (and yes, I remember Johann Hari).

In short, there is a market for high quality news, and there is a market for soap-based sensationalism. In an increasingly fragmented news environment, attempts to introduce control are not only illiberal – they are doomed to failure. Those who believe a statutory code of conduct would rein back the excesses of the feral press are fooling ourselves. No system of regulatory control can cover the numerous sources of news and information now available online. So why try and control any of it?

Whatever the many flaws of our newspapers, press freedom is too valuable to slaughter on the altar of misguided authoritarianism.

A free press, but a responsible press

Chris Frost, Liverpool John Moores University

Almost everyone believes there needs to be a change in the press regulatory system and that the PCC is not fit for purpose; The PCC itself has said so, Parliament, Pressbof and newspaper proprietors have said so, the NUJ and numerous campaign groups have said so.

There needs to be a new regulator – “a press regulator with teeth” - according to the PCC chair Lord Hunt. So what is Leveson all about if everyone is agreed?

Well, as with all things, the devil is in the detail. What teeth and how do you ensure they bite the right people at the right time? It’s all very well having a watchdog but if it barks all night yet fails to deter burglars, it’s worse than pointless.

Newspapers are still campaigning to keep self regulation largely on the basis of promising a new approach. Lord Hunt reminded the recent Society of Editors conference that: “in essence the PCC is still a complaints-handling body, not a full regulator. Whatever anyone may allege, that has always been perfectly evident, from the outset, to anyone who has taken even a passing interest in the Articles of Association and modus operandi of the PCC.” Whilst he is right that it has only ever handled complaints, that is not how the PCC has portrayed itself. Even now on its website it says: “The PCC is an independent body which administers the system of self-regulation for the press.” It is hardly surprising that people would get the idea it thinks it is a regulator.

Lord Hunt wants a system of contracts that will tie publishers to a new regulator. The problem is, can he guarantee that all will join? What about the Desmond conundrum; how can the system operate if one publisher fails to join?

The PCC failed, in part at least, because it constantly had to aim at the lowest common denominator for fear that those breaking its code would resign. We need to find a way of regulating that ensures all are obliged to accept the authority of a new body. Despite its obvious repugnance, the only real option is a regulator set up with statutory underpinning that would be able to oblige all commercial publishers to uphold its code of practice.

We need to understand a few things right away. First this is not licensing; anyone could set up a newspaper (if they could afford it) they would just be obliged to uphold the code of practice (which should be drawn up by the industry). Nor is it censorship; any newspaper could publish what it liked it when it liked it would merely be responsible for what it published. Defame someone and it would risk a libel suit. Invade their privacy and it could be another visit to the High Court. Tweet the name of a rape victim and it's a charge of contempt, Breach the code and the regulator could fine the paper if it felt the breach was serious enough or a repeat offence.

Opponents of such a system, mainly the newspapers likely to be regulated by it, say this is state regulation and a gross threat to press freedom but as H. L. Mencken said: "Freedom of the press is limited to those who own one"; what newspaper owners really want to protect is their commercial right to make a profit out of intrusion, propaganda and entertainment.

Don't get me wrong. All of those things are properly the right of newspapers (and anyone else) provided the rights of other are protected and provided the journalism involved is carried out legally and ethically. There's nothing wrong with making a profit. However making a profit needs regulation in order to prevent greed overcoming good sense, as we have seen happen all too often in all walks of life over the past five years. The right to trade freely is an important right, but it is one that is heavily regulated by statute in order to protect people from harm. If you sell goods, there are laws to ensure fair competition, to protect people from harm and ensure they are sold what they think they are buying. When people are buying newspapers, it is difficult to understand why they should not receive the same protection. Newspapers and magazines are produced as commercial operations designed to make profits for their shareholder but if I buy one, I expect the news to be true, reasonably accurate and a fair selection of the day's important events. If I don't get reasonable standards, why can I not complain?

Nor should we take cherished beliefs such as free expression for granted. We need to build a case for press freedom, freedom of expression and regulation of responsible journalism from the ground up. It is not enough to say that press freedom is the same as free expression and we must have free expression, merely because Mill and Milton expressed it so. Mill himself points out the dangers of failing to contest firmly held beliefs: "the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction, from reason or personal experience." We should hear all opinions he said to allow for that growth.

What is important is the right freedom of expression – a vital human right that we each possess singly and individually. It is what allows us to challenge of leaders, uphold our rights and protect our freedoms. Whilst this is closely linked to press freedom in that journalists have the same right to free expression, they are not the same because the power of the media is different to the power of the individual. The press arguably needed the same freedom back in the time of Milton and Mill as it was the only real way of disseminating free expression to a mass market. But that access to a mass market brings additional responsibilities over the right to free expression as individuals. But we are now in a time where the limitation of access to newspapers no longer applies. None of us depend on newspapers to present our views and to be the central forum for public debate any longer. The press continues to have an important role, but it is no longer alone and broadcasting and the internet allows us all the free expression we could want. Indeed it's been quite a long time since some of our national papers have played any real part in informing the nation and facilitating debate, preferring instead to deal with propaganda and tittle-tattle.

So what of regulation? There needs to be a regulatory body and it needs to have authority over all publications that are produced commercially and are of a certain size.

The body needs to be able to draw up a code of practice for newspapers and it needs to be able to police that. Anyone should be able to complain to this body that will deal with it speedily and at no cost to the complainant. In cases where the publication is deemed to have breached the code it should be obliged to publish a short report of the adjudication in a position ordered by the regula-

tor. In serious cases where the publication has been reckless, malicious or for repeated breaches around the same issue the regulator should be able to fine the newspaper. This fine should be proportionate and linked to the publication's turnover or advertising income.

All of this requires statutory underpinning in order to ensure the regulator's authority covers all commercial publications. Ofcom and the BBC are underpinned by statute, but I have yet to hear anyone make a case that government is preventing them broadcasting what they want. Some have pointed to recent difficulties but these cannot be ascribed to over-regulation. Ofcom gains its authority from statute not the government, it takes its regulatory lead from people appointed by the minister, but this new regulator could easily have people nominated by organisations with a direct interest.

Concerns from many that more effective regulation would bring more interference are simply not supported by evidence. In 20 years of the PCC and more than 30 years of the Press Council before it not one complaint was made about any newspaper or magazine exposing malpractice or abuse by those in power. All the serious complaints made to both bodies concerned issues such as newspapers lying, intruding on privacy or presenting a highly prejudiced, unfair and often false view of certain sections of society. In most cases the PCC and the PC before it, ignored the complaints either by saying it was in the public interest or, in the case of the PCC, by saying it didn't accept third party complaints.

We must move beyond this in order to protect publications that play an important role in society and which are threatened by bad management, economic storms and public mistrust. If we have another fudge as we did in 1953, 1961, 1972, 1977, 1989, 1993 and 2010 (when the PCC's own review firmly threw out all the recommendations that Lord Hunt is now proudly pursuing) then we will get what we deserve because only a fool keeps trying the same thing in the hope of getting a different result.

What do you think? Join in the debate on the AJE's website www.ajeuk.org or www.journalism-education.org